

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

## TERRANCE JON IRBY.

Plaintiff,

V.

STATE OF WASHINGTON, et al.,

Defendant.

CASE NO. 3:15-cv-05208-RBL-JRC

## ORDER TO SHOW CAUSE

Before both this Court and the District Court are several motions from both parties:

plaintiff's motion for reconsideration of the district judge's order (Dkt. 257); plaintiff's motion for certificate of interlocutory appeal (Dkt. 266); plaintiff's motion for clarification (Dkt. 270); defendant Furst's motion for summary judgment (Dkt. 261); and plaintiff's motion to strike the motion for summary judgment (Dkt. 275). Plaintiff's motion for enlargement of time (Dkt. 276) and motion to transmit record to the Ninth Circuit (Dkt. 278) are also before the Court, but are not yet ripe for consideration. Plaintiff filed a notice of appeal to the Ninth Circuit Court of Appeals on January 29, 2018, challenging the District Court's decision to adopt this Court's

1 report and recommendation and dismissing plaintiff's case with leave to file an amended  
2 complaint. Dkt. 273.

3 While the filing of an interlocutory appeal does not automatically stay proceedings in the  
4 district court, the district court has broad discretion to decide whether a stay is appropriate to  
5 "promote economy of time and effort for itself, for counsel, and for litigants." *Filtrol Corp. v.*  
6 *Kelleher*, 467 F.2d 242, 244 (9th Cir. 1972) (quotations and citations omitted). "A trial court  
7 may, with propriety, find it is efficient for its own docket and the fairest course for the parties to  
8 enter a stay of an action before it, pending resolution of independent proceedings which bear  
9 upon the case." *Mediterranean Enterprises, Inc. v Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th  
10 Cir. 1983); *Leyva v. Cetrtified Grocers of California, Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979);  
11 *Ass'n of Irritated Residents v. Fred Schakel Dairy*, 634 F Supp. 2d 1081, 1094 (E.D. Cal. 2008);  
12 *Jenkins v. Vail*, 2009 WL 3415902 at \*1 (E.D. Wash. Oct. 21, 2009) (staying motion for  
13 summary judgment pending Court of Appeals ruling on order denying temporary restraining  
14 order).

15 Here, plaintiff is appealing the District Court's order adopting this Court's report and  
16 recommendation and dismissing plaintiff's complaint. The Ninth Circuit's determination about  
17 whether the case should have been dismissed has a direct bearing on plaintiff's motion for  
18 reconsideration (Dkt. 257) and motion for enlargement of time (Dkt. 276), and could have a  
19 bearing on defendant's motion for summary judgment (Dkt. 261), plaintiff's motion to strike  
20 (Dkt. 275) and plaintiff's proposed amended complaint (Dkt. 276-1, 276-2, 276-3). Because the  
21 Ninth Circuit's ruling on the interlocutory appeal could impact the Court's rulings on several  
22 pending motions, waiting until the issues on appeal are decided will avoid unnecessary litigation  
23 and provide direction to the Court. See *Jenkins*, 2009 WL 3415902 at \*1. Thus, a stay of this  
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1 matter pending the Ninth Circuit's decision on appeal would serve the interests of fairness and  
2 "promote economy of time and effort" for the Court and the parties. *Kelleher*, 467 F.2d at 244.

3 Accordingly, the parties are directed to show cause on or before March 16, 2018, why  
4 this matter should not be stayed, pending the outcome of plaintiff's appeal challenging this  
5 Court's recommendation and the District Court's decision to adopt that recommendation,  
6 dismissing plaintiff's case.

7 The Clerk is directed to re-note all outstanding motions with noting dates earlier than that  
8 (Dkts. 257, 261, 266, 270, 275, 276, 278) to March 16, 2018.

9 Dated this 20th day of February, 2018.

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11 J. Richard Creatura  
12 United States Magistrate Judge

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